

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CARL F. FOUST,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>CIV-17-559-M</u>
)	(On Removal from the District
ARROW WRECKER SERVICE, INC.)	Case No. CJ-2017-2335)
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant, Arrow Wrecker Service, Inc. (“Defendant”), files this Notice of Removal of this action from the District Court of Oklahoma County, Oklahoma, pursuant to 28 U.S.C. §§ 1441, 1446, and 1331. In support of its Notice of Removal, Defendant states the following:

Procedural Background

1. On April 21, 2017, Plaintiff, Carl F. Foust (“Plaintiff”), filed a Petition against Defendant in the District Court of Oklahoma County, Oklahoma, Case No. CJ-2017-2335. A copy of Plaintiff’s Summons and Petition are attached as Exhibits 1 and 2.
2. Defendant was served with a copy of the Summons and Petition on April 25, 2017. A copy of the return of service is attached as Exhibit 3.
3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), having been filed within thirty days after service on Defendant of the initial pleading.

Legal Argument

4. Plaintiff's claim is for alleged failure to pay overtime wages related to Plaintiff's past employment with Defendant. Ex. 2 at ¶¶ 2, 4-13. Specifically, Plaintiff makes a claim under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Ex. 2, ¶¶ 1-3.

5. A civil action may be removed if "the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). A federal district court has original subject matter jurisdiction over matters involving federal questions. *Id.* at § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

6. Plaintiff alleges a violation of the FLSA, 29 U.S.C. § 201 *et seq.* See Ex. 2 ¶¶ 55-56. Accordingly, this Court has original jurisdiction over this action under 28 U.S.C. § 1331, and thus, this case is removable to this Court pursuant to 28 U.S.C. § 1441. This Court is the United States District Court for the district where Plaintiff's lawsuit is pending.

7. This Notice of Removal does not waive any objections Defendant has to improper service of process, jurisdiction, venue, or any other defenses or claims, all of which are expressly reserved.

Certifications

8. Pursuant to 28 U.S.C. § 1446(d), the undersigned certifies that promptly after the filing of this Notice of Removal in this Court, a Notice of Filing of Removal will be filed in the State Court and served on all parties.

9. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within the thirty-day period for removing actions from state court to federal court.

10. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of the state court pleadings and orders served by or on Defendant are attached:

- a. Exhibit 1: Summons;
- b. Exhibit 2: Petition;
- c. Exhibit 3: Return of Service;
- d. Exhibit 4: Entry of Appearance for Chris Hammons;
- e. Exhibit 5: Entry of Appearance for D. Colby Addison.

11. A copy of the State Court docket is attached as Exhibit 6.

WHEREFORE, Defendant, Arrow Wrecker Service, Inc., respectfully requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the District Court for Oklahoma County, Oklahoma to the United States District Court for the Western District of Oklahoma.

Respectfully submitted,

/s/ Tony G. Puckett

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2017, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to any ECF registrants for this case.

Chris Hammons
D. Colby Addison
LAIRD HAMMONS LAIRD, PLLC
1332 SW 89th St.
Oklahoma City, OK 73159

ATTORNEYS FOR PLAINTIFF

/s/ Tony G. Puckett

Tony G. Puckett